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DATUK BANDAR KUALA LUMPUR

v.

ABDUL AZIZ MOHAMED GINAN & ORS

B

COURT OF APPEAL, PUTRAJAYA
ZULKEFLI MAKINUDIN JCA
RAUS SHARIF JCA
HELILIAH MOHD YUSOF JCA
[CIVIL APPEAL NO: W-01-16-2007]

C

18 APRIL 2007

CIVIL PROCEDURE: *Injunction - Interim injunction - Appeal against decision of High Court granting an interim injunction restraining defendant from acting upon eviction notices served upon plaintiffs until full*

D

trial of case - Principles applicable - Serious questions to be tried - Balance of convenience - Whether judge erred in law and in fact in evaluation of relevant matters of case

LOCAL GOVERNMENT: *Squatters - Removal of - Injunction - Appeal against decision of High Court granting an interim injunction*

E

restraining defendant from acting upon eviction notices served upon plaintiffs until full trial of case - Principles applicable - Serious questions to be tried - Balance of convenience - Whether judge erred in law and in fact in evaluation of relevant matters of case

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LAND LAW: *Restraints on dealings - Injunction - Appeal against decision of High Court granting an interim injunction restraining defendant from acting upon eviction notices served upon plaintiffs until full trial of case - Principles applicable - Serious questions to be tried - Balance of convenience - Whether judge erred in law and in fact in*

G

evaluation of relevant matters of case

This was an appeal by the defendant against the decision of the High Court granting the interim injunctive reliefs sought by the plaintiffs under their application by way of summons-in-chambers

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in encl. 4. Plaintiffs Nos. 1 to 85 claimed that they were the occupiers of Kampung Semarak, Kuala Lumpur while plaintiffs nos. 86 to 109 claimed likewise in respect of Kampung Loke Yew, Kuala Lumpur. In the early 1970's, about 50 persons had started constructing structures on the land that was now known as

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Kampung Semarak. There were various facilities and amenities provided for Kampung Semarak, and the plaintiffs alleged that the defendant had given recognition as to the existence of Kampung

Semarak. In their suit against the defendant, the plaintiff contended that the notices served by the defendant pursuant to the Essential (Clearance of Squatters) Regulations 1969 to evict them from their homes were invalid. The plaintiffs also submitted that they were equitable licencees on the land by virtue of the Government's encouragement in allowing them to stay there over a period of time and in consequence of which they had incurred expenditure on the structures erected on the land. The defendant's defence against the plaintiffs' action was essentially that the plaintiffs were squatters and had occupied State land illegally, and it was the Government's policy that squatter areas would be given the necessary basic facilities until they are relocated. The defendant averred that the land presently occupied by the plaintiffs was involved in a highway project known as 'Projek Pembinaan Lebuhraya Duta-Ulu Kelang' ('DUKE Project'). The defendant alleged that the plaintiffs' squatter huts or structures were constructed without approved plans from the defendant as the local authority, and that the balance of convenience favoured the defendant in not granting the injunctive reliefs sought by the plaintiffs. The learned judge found for the plaintiffs, holding that there were serious issues or questions to be tried. Hence, the present appeal by the defendant.

Held (allowing the appeal)
Per Zulkefli Makinudin JCA delivering the judgment of the court:

(1) There was no flaw in respect of the learned judge's finding that there were serious issues or questions to be tried. Based on the plaintiffs' pleadings and affidavits filed by both the parties, the learned judge was justified in the circumstances of the case at that stage of the proceedings to have made such a finding. Therefore, the merits of the case for the respective parties on those triable issues raised should be litigated and decided at the trial proper. However, the learned judge had failed in his evaluation of the relevant matters to be taken into account in deciding whether to grant the said interim injunctive reliefs after finding that there were serious questions to be tried. There was the pertinent question of having to decide on the balance of convenience or more aptly referred to as where the justice of the case lay. (paras 9 & 10)

(2) The learned judge had erred in law and in fact in his failure to properly evaluate and address his mind regarding the relevant matters prevailing in this case before deciding that the balance of convenience favoured the plaintiff. On the facts and circumstances of this case, the balance of convenience should tilt more in favour of the defendant on the following grounds: (i) the plaintiffs were not claiming any interest on the land. The ultimate relief sought by the plaintiffs as shown in their amended statement of claim was merely for damages to satisfy their alleged equity on the land. If that were the case, then it would be a reasonable inference that the plaintiffs were only interested in compensation. Such damages and compensation, if any, to be awarded to the plaintiffs were definitely measurable and capable of being valued; (ii) the DUKE Project was of public interest as the purpose was to ease the flow of traffic in the city of Kuala Lumpur. The interim injunction pending trial which was granted by the learned judge would cause the DUKE Project to be delayed or abandoned as the full trial would take some considerable time to be concluded. The defendant in this case was a public authority performing duties to the public and on this premise, the balance of convenience would have to lean in favour of the defendant in not granting the injunction sought by the plaintiffs; (iii) the plaintiffs were provided with alternative accommodation by the defendant for moving out of the said land and, apart from that, each family unit was to be paid an *ex-gratia* sum of RM2,000. The defendant would also provide labour, lorries and boxes to the plaintiffs to relocate. The plaintiffs would thus be living in better living conditions; and (iv) no undertaking to pay damages had been given by the plaintiffs. In any event, any undertaking by the plaintiffs would remain a mere undertaking since the plaintiffs were not in any financial position to pay damages. For the defendant, it stated that a loss of about RM165,000 per day was incurred by the Concessionaire Company assigned to construct the DUKE Project resulting from the delay in taking possession of the site where the plaintiffs' squatter huts were located. The defendant further stated that from the date of the ad-interim injunction given on 22 September 2006 until 6 February 2007, the Concessionaire Company had incurred losses of about RM25 million. Those losses would in turn cause the Government financial implications whereas, on the other hand, the

defendant or Concessionaire Company was in a financial position to pay damages to the plaintiffs in the event the plaintiffs ultimately succeeded at the full trial. (paras 12, 13, 14, 15 & 16)

Bahasa Malaysia *translation of headnotes*

Ini adalah rayuan defendan terhadap keputusan Mahkamah Tinggi kerana membenarkan relif injunksi interim yang dipohon oleh plaintif-plaintif melalui permohonan saman dalam kamar di kandungan 4 di sini. Plaintif-plaintif no. 1 hingga 85 dan plaintif-plaintif no. 86 to 109 menuntut bahawa mereka adalah penduduk-penduduk Kampung Semarak dan Kampung Loke Yew, Kuala Lumpur, masing-masingnya. Pada awal tahun 1970an, lebih kurang 50 orang telah meneroka apa yang sekarang dikenali sebagai Kampung Semarak dengan membina kediaman-kediaman di situ. Terdapat beberapa kemudahan asas disediakan di Kampung Semarak, berikutan mana plaintif-plaintif mendakwa bahawa kewujudan Kampung Semarak telah diiktiraf oleh defendan. Dalam tindakan mereka terhadap defendan, plaintif berhujah bahawa notis yang dikeluarkan oleh defendan di bawah Peraturan-Peraturan Perlu (Penghapusan Setinggan) 1969 untuk mengusir mereka dari kediaman mereka adalah tak sah. Plaintif seterusnya berhujah bahawa mereka adalah equitable licencees di atas tanah berdasarkan galakan yang diberikan Kerajaan yang membenarkan mereka tinggal di situ untuk sekian lama yang berakibat mereka telah membelanjakan banyak wang untuk mendirikan kediaman-kediaman mereka. Pembelaan defendan pada asasnya adalah bahawa plaintif adalah merupakan setinggan-setinggan yang menduduki tanah Kerajaan secara haram. Dihujahkan seterusnya bahawa sudah menjadi dasar Kerajaan untuk membekalkan pendudukan sedemikian dengan kemudahan-kemudahan asas sehinggalah mereka dipindahkan. Defendan selanjutnya berkata bahawa tanah yang diduduki plaintif kini terlibat dengan projek pembinaan lebuhraya yang dipanggil 'Projek Pembinaan Lebuhraya Duta-Ulu Kelang' ('Projek DUKE'). Menurut defendan lagi, rumah atau pondok-pondok setinggan yang didirikan oleh plaintif adalah didirikan tanpa sebarang pelan yang diluluskan oleh defendan selaku pihakberkuasa tempatan, yang berakibat, imbangan keselesaan adalah menyebelahi defendan untuk tidak membenarkan relif unjunktif yang dipohon oleh plaintif. Yang arif hakim mendapati untuk plaintif dengan mengatakan terdapat isu-isu serius yang perlu dibicarakan. Berikutnya, defendan merayu.

Diputuskan (membenarkan rayuan)
Oleh Zulkefli Makinudin HMR menyampaikan penghakiman mahkamah:

(1) Tiada kecacatan pada rumusan yang arif hakim bahawa terdapat isu-isu serius yang perlu dibicarakan. Berdasarkan pliding plaintif serta afidavit-afidavit yang difailkan kedua-dua pihak, yang arif hakim mempunyai justifikasi mencukupi dalam keadaan yang wujud untuk mencapai dapatan sedemikian di peringkat itu. Oleh itu, merit kes masing-masing pihak atas isu-isu berbalah yang dibangkitkan harus dibicara dan diputuskan di perbicaraan penuh. Walaupun begitu, setelah memutuskan wujud isu-isu yang perlu dibicarakan, yang arif hakim gagal dalam penilaiannya terhadap perkara-perkara yang perlu diberi pertimbangan sebelum relif injunktif boleh dibenarkan. Terdapat persoalan yang perlu diputuskan mengenai di manakah letaknya imbangan keselesaan atau dengan lebih tepat lagi di manakah letaknya neraca keadilan kes.

(2) Yang arif hakim khilaf di sisi fakta dan undang-undang apabila gagal menilai dan menumpukan perhatian kepada perkara-peraka relevan yang berbangkit dalam kes ini sebelum memutuskan bahawa imbangan keselesaan berpihak kepada plaintif. Berdasarkan fakta dan halkeadaan kes, imbangan keselesaan harus memihak kepada defendan atas alasan-alasan berikut: (i) plaintif tidak menuntut sebarang kepentingan atas tanah. Relif sebenar yang dituntut plaintif seperti yang terserlah dari penyata tuntutan terpinda mereka adalah semata-mata untuk gantirugi yang disandarkan kepada ekuiti mereka terhadap tanah. Jika begitulah kedudukannya, maka inferens munasabah boleh dibuat bahawa plaintif hanya berminat untuk mendapatkan pampasan. Gantirugi dan pampasan sedemikian, jika wujud dan perlu diawardkan kepada plaintif, adalah boleh dinilai dan ditaksir; (ii) Projek DUKE mempunyai kepentingan awam kerana tujuannya adalah untuk menyenangkan pergerakan lalulintas di bandaraya Kuala Lumpur. Injunksi interim sementara menunggu perbicaraan yang dibenarkan oleh yang arif hakim akan melengahkan Projek DUKE atau akan menyebabkannya terbengkalai memandangkan perbicaraan penuh mengambil masa yang agak panjang untuk selesai. Defendan dalam kes ini adalah pihakberkuasa awam yang menjalankan tugas-tugas untuk orang ramai, dan atas alasan ini imbangan keselesaan harus berpihak kepada defendan dengan tidak membenarkan injunksi yang dipohon plaintif; (iii) plaintif

telah diberikan tempat tinggal alternatif oleh defendan apabila keluar dari tanah tersebut, dan selain dari itu, setiap keluarga juga dibayar bayaran *ex-gratia* sebanyak RM2,000. Defendan juga menyediakan tenaga kerja, lori-lori dan kotak-kotak untuk memudahkan pemindahan. Ini bererti plaintif boleh menikmati suasana kehidupan yang lebih baik; dan (iv) tiada akujanji untuk membayar gantirugi telah dibuat oleh plaintif. Apapun, akujanji, jika diberi, tidak bermakna apa-apa kerana plaintif tidak mempunyai kemampuan untuk membayar gantirugi. Defendan juga menyatakan bahawa Syarikat Konsesionaire yang diberi tugas membina Projek DUKE menanggung kerugian RM165,000 sehari akibat kelewatan mengambil milikan tanah di mana pondok-pondok setinggan plaintif didirikan. Defendan seterusnya menyatakan bahawa sejak dari tarikh injunksi ad-interim diberikan pada 22 September 2006 sehingga ke 6 Februari 2007, Syarikat Konsesionaire telah mengalami kerugian berjumlah RM25 million. Kerugian tersebut pula akan mengakibatkan implikasi kewangan kepada Kerajaan sedangkan, di sebalik semua itu, defendan mahupun Syarikat Konsesionaire mempunyai kemampuan untuk membayar gantirugi sekiranya plaintif pada akhirnya berjaya di perbicaraan penuh nanti.

Case(s) referred to:

American Cyanamid v. Ethicon Ltd [19751 1 All ER 504 ***(refd)***

Keet Gerald Francis Noel John v. Mohd Noor Abdullah & Ors [1995] 1 CLJ 293 CA ***(refd)***

Smith & Others v. Inner London Education Authority [1978] 1 All ER 411 ***(refd)***

Legislation referred to:

Essential (Clearance of Squatters) Regulations 1969, reg. 4

For the appellant/defendant - B Thangaraj (YC Lee with him); M/s Thangaraj & Assoc

For the respondents/plaintiffs - R Sivarasa (Ravi Nekoo, Cheng Poh Heng & K Parameswary with him); M/s Cheng Poh Heng & Co

Watching brief for Konsortium Lebuhraya Utara-Timur Kuala Lumpur Sdn Bhd - K Siva Balan

[Appeal from High Court, Kuala Lumpur; Civil Suit No: S3-21-221-2006]

Reported by Suresh Nathan

A

JUDGMENT

Zulkefli Makinudin JCA:

Introduction

B **[1]** This is an appeal by the defendant against the decision of the High Court at Kuala Lumpur granting the interim injunctive reliefs sought by the plaintiffs under their application filed by way of summons-in-chambers ("encl. 4"). The plaintiffs filed the writ and statement of claim on 8 September 2006. Enclosure 4 was C filed on the same day on 8 September 2006 and under it the plaintiffs sought the following reliefs:

> (1) Satu Injunksi Interim bahawa defendan dihalang, samada ia sendiri, dan/atau pekerja-pekerja mereka dan/atau agen-agennya dari bertindak ke atas notis-notis yang dikeluarkan D oleh defendan tersebut dengan memasuki dan merobohkan rumah, atau apa-apa bangunan yang telah didirikan oleh plaintif-plaintif di Lot 28137 sehingga selesai perbicaraan prosiding ini dan/atau sehingga perintah selanjutnya dari Mahkamah ini.
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> (2) Satu Injunksi Interim bahawa defendan dihalang, samada ia sendiri, dan/atau pekerja-pekerja mereka dan/atau agen-agennya daripada mengeluarkan sebarang notis di bawah Peraturan-Peraturan Perlu (Pembersihan Setinggan-Setinggan) 1969 ke atas plaintif-plaintif tersebut sehingga selesai F perbicaraan presiding ini dan/atau sehingga perintah selanjutnya dari Mahkamah ini.

[2] Enclosure 4 was fixed for hearing on 22 September 2006. Upon an oral application by the plaintiffs' counsel for an ad G interim injunction, the learned judge after hearing submissions from both parties granted an ad interim injunction in favour of the plaintiffs pending the disposal of encl. 4. Subsequently after hearing submissions from both parties on the substantive application as in encl. 4, the learned judge on 6 February 2007 H made an order in terms of the application.

Background Facts Of The Case And Contention Of The Parties

[3] The relevant background facts of the case are as follows:

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[4] Plaintiffs No. 1 to 85 claimed they are occupiers of Kampung Semarak, Kuala Lumpur whilst plaintiffs No. 86 to 109 claimed they are occupiers of Kampung Loke Yew, Kuala Lumpur. In the early 1970's, about fifty persons had started constructing structures on the land which is now known as Kampung Semarak. There are various facilities provided for Kampung Semarak which includes workshop, kindergarten, community centre, roads, 'surau', water, electricity and telephone. The plaintiffs alleged that the defendant had given recognition as to the existence of Kampung Semarak and one good example is the fact that the road signboards put up by the defendant in the locality referred it as 'Kampung Semarak'. In the suit filed against the defendant the plaintiffs contended that the notices served by the defendant pursuant to the Essential (Clearance of Squatters) Regulations 1969 ("the Regulations") to evict them from their homes are invalid. The plaintiffs also contended that they are equitable licencees on the said land by virtue of the encouragement by the Government in allowing them to stay therein over a period of time and in consequence of which they had incurred expenditure on the structures erected on the said land.

[5] It is to be noted in the amended statement of claim, the final reliefs sought by the plaintiffs are as follows:

(a) Satu deklarasi bahawa wujudnya satu ekuiti bagi pihak plaintif-plaintif yang mana ekuiti tersebut meliputi nilai perbelanjaan pengubahsuaian tanah, rumah (termasuk kedai dan gerai), harga semasa rumah (termasuk kedai dan gerai) mereka serta kos pemindahan.

(b) Satu deklarasi bahawa plaintif-plaintif mempunyai hak milikan eksklusif ke atas tanah tersebut selagi hak ekuiti mereka itu tidak ditunaikan melalui tawaran membeli rumah, dan pembayaran pampasan dan gantirugi yang perlu ditaksir.

(c) Satu injunksi menghalang defendan samada secara sendiri dan/atau pekerja-pekerja mereka dan/atau ejen mereka dari memasuki dan merobohkan rumah dan apa-apa bangunan yang telah didirikan oleh plaintif-plaintif di GRN 55820, No. Lot 28137, Mukim Setapak, Daerah Kuala Lumpur.

(d) Relif lain yang sewajarnya.

(e) Kos.

[6] For the defendant its defence against the action filed by the plaintiffs essentially is that the plaintiffs are squatters and have continued to occupy State land. As the plaintiffs have occupied State land illegally it was the policy of the Government that squatter areas would be given the necessary basic facilities until they are relocated. The defendant stated that presently the land where the plaintiffs are occupying is involved in the highway project known as 'Projek Pembinaan Lebuhraya Duta - Ulu Kelang' ("the DUKE Project"]. The DUKE Project is well described in para. 7 of the affidavit in reply of the defendant (encl. 9) as follows:

> 7. Perenggan 14 Afidavit plaintif (1) adalah diakui dan defendan akan selanjutnya menyatakan bahawa Lebuhraya Duta – Ulu Kelang (selepas daripada ini dirujuk sebagai "DUKE") adalah projek yang dilaksanakan oleh Kerajaan Malaysia. Perkara-perkara berkaitan projek DUKE adalah seperti berikut:
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> 7.1 Lebuhraya DUKE sepanjang lapan belas (18) kilometer yang bermula dari North Klang Valley Expressway (NKVE) di Jalan Duta dan berakhir di Jalan Lingkaran Tengah II (MRR II) di sebelah timur Kuala Lumpur dan Batu Caves di sebelah utara. Lebuhraya ini direkabentuk dengan lapan (8) dan enam (6) laluan dua (2) hala. Pembinaan DUKE akan dilengkapi dengan tujuh (7) persimpangan bertingkat dan empat (4) laluan susur keluar masuk.
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> 7.2 DUKE merupakan sebahagian dari rancangan Kerajaan Pesekutuan bagi Pelan Induk Jalan Raya Kuala Lumpur yang akan melengkapkan jalan-jalan lingkaran dari jejari bandaraya untuk mengurangkan kesesakan trafik. Justeru itu, DUKE dikenal pasti sebagai 'PENYAMBUNG HUBUNGAN UTAMA' untuk jalan-jalan lingkaran perantaraan di dalam Pelan Induk Jalan Raya, Hubungan ini adalah penting untuk jalan raya di bahagian timur-barat di sebelah utara Kuala Lumpur yang menyediakan laluan alternative untuk mengelakkan trafik dari menggunakan jalan pusat bandaraya. Ianya juga merupakan skim penyuraian trafik ke kawasan pinggiran melalui penyambungan ke jalan-jalan jejari seperti Jalan Segambut, Jalan Kuching, Jalan Sentul, Jalan Semarak, Jalan Setiawangsa, Jalan 37/56 dan Jalan Bandar Dalam.
>
> 7.3 Lebuhraya ini mempunyai ciri-ciri terkini Informasi Trafik dan Pengurusan Sistem (MIS) dan dilengkapi dengan kelengkapan moden seperti Sistem Pesanan Maklumat Berubah (VMS), Pusat Kawalan dan Sistem Pemantauan

Berpusat dan Tol Elektronik. Sistem tol terbuka akan digunakan agar pengguna lebuhraya DUKE akan hanya dikenakan tol sekali saja untuk kesemua destinasi. Empat puluh enam peratus (46%) dari lebuhraya ini adalah bebas tol, termasuk Persimpangan Bertingkat Duta ke Persimpangan Bertingkat Kuching, Persimpangan Bertingkat Setiawangsa ke Persimpangan Bertingkat Hill View dan Persimpangan Bandar Dalam sehingga ke Persimpangan Bertingkat Greenwood.

7.4 DUKE mempunyai tiga (3) hubungan utama iaitu:

(a) HUBUNGAN DUA bermula selepas Plaza Tol NKVE akan memberi keselesaan perjalanan tanpa halangan dari Duta dan Sri Hartamas ke arah timur dan laluan hubungan terus dari kawasan sesak dengan bersambung dari Jalan Segambut, Jalan Kuching dan Jalan Sentul.

(b) HUBUNGAN ULU KELANG bersambung dari arah timur merentasi jalan-jalan jejari seperti Jalan Semarak, Jalan Setiawangsa dan Jalan Ulu Kelang/MRR II. Hubungan ini akan dapat mengurangkan kesesakan dari kawasan tersebut dengan menyambungkan haluan ke Lebuhraya DUKE.

(c) HUBUNGAN KARAK bermula dari Hubungan Duta/ Ulu Kelang dan di selatan pinggiran yang berpusat di Batu Caves serta juga perjalanan jarak jauh ke Genting, Karak dan pantai timur.

[7] It is the contention of the defendant that as at 28 August 2006, the plaintiffs' squatter huts are located on State land. The squatter huts or structures on the said land as alleged by the defendant were constructed by the plaintiffs without approved plans from the defendant as the local authority. The defendant has duly issued notices pursuant to the provision of reg. 4 of the Regulations to the plaintiffs by giving seven (7) days notice for the plaintiffs to demolish the squatter huts but the plaintiffs have refused to move out of the said land. It is the defendant's case that the balance of convenience favours the defendant in not granting the injunctive reliefs sought for by the plaintiffs.

Decision Of This Court

[8] At the outset we would state here that the learned judge had comprehensively dealt with all the relevant issues canvassed by both parties in his grounds of judgment. The learned judge had

A stated that he had applied the principles as laid down in *American Cyanamid v. Ethicon Ltd.* [19751 1 All ER 504 and *Keet Gerald Francis Noel John v. Mohd Noor bin Abdullah & Ors.* [1995] 1 CLJ 293 in granting the interlocutory injunction to the plaintiffs pending the hearing and determination of the action filed by the plaintiffs.
B The learned judge found that there are serious issues or questions to be tried and amongst the serious questions to be tried are as follows:

(a) whether the land on which the plaintiffs' houses are sited is
C State land, or whether it is alienated land;

(b) assuming that the land is State land, whether the plaintiffs are by virtue of reg. 4 of the Regulations, entitled to be given reasonable notice of the intended demolition;

D (c) assuming that the land is State land and the plaintiffs are entitled to be given reasonable notice, whether the notice issued is a reasonable and proper notice for the purpose of reg. 4;

E (d) assuming that the land is State land and that the plaintiffs are entitled to be given reasonable notice, whether the notice was properly served on the plaintiffs; and

(e) whether the DUKE Project is a Government project or
F whether it is a private project.

[9] We do not think we could detect any flaw in respect of the above findings made by the learned judge as to the fact that there are serious issues or questions to be tried. Based on the plaintiffs' pleadings and affidavits filed by both the parties, the learned judge
G was justified in the circumstances of the case at that stage of the proceedings to have made such findings. We are therefore of the view the merits of the case for the respective parties on those triable issues raised should be litigated and decided at the trial proper.

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[10] However, it is our judgment that we find the learned judge in this case had failed in his evaluation of the relevant matters to be taken into account in deciding whether to grant the said interim injunctive reliefs after finding that there are serious issues
I or questions to be tried. There is the pertinent question of having to decide on the balance of convenience or more aptly referred to as where the justice of the case lies. The principle of law on this

point is well established as laid down in the case of *Keet Gerald Francis Noel John v. Mohd Noor bin Abdullah & Ors (supra)* wherein Gopal Sri Ram, JCA in delivering the judgment of the Court of Appeal *inter alia* stated as follows:

> having found that an issue has been disclosed that requires further investigation, he must consider where the justice of the case lies. He must take into account all relevant matters, including the practical realities of the case before him and weigh the harm the injunction would produce by its grant, against the harm that would result from its refusal and the judge must have in the forefront of his mind that the remedy that he is asked to administer is discretionary, intended to produce a just result for the period between the date of the application and the trial proper and to maintain the *status quo*. It is a judicial discretion capable of correction on appeal. A judge should briefly set out in his judgment the several factors that weighed in his mind when arriving at his conclusion.

[11] On the issue of balance of convenience in the present case the learned judge in his grounds of judgment *inter alia* had this to say:

> In my judgment the balance of convenience favours the plaintiffs. If the interlocutory injunction is not allowed they are going to lose their homes. The plaintiffs' houses may appear humble. But there is an English saying that an Englishman's home is his castle. I will say that every man's home is his castle. This is a universal human value. A person's home how small and simple it is, still, it means everything to him and to his family. It is his life. Housing is a basic human need.

[12] With respect to the above finding of the learned judge, we find the learned judge had erred in law and in fact in his failure to properly evaluate and address his mind on the relevant matters prevailing in this case before deciding that the balance of convenience favours the plaintiffs. On the facts and circumstances of this case we are more inclined to hold the view that the balance of convenience should tilt more in favour of the defendant on the grounds as follows:

[13] Firstly, it is to be noted that the plaintiffs are not claiming any interest on the said land. The ultimate relief sought by the plaintiffs as shown in their amended statement of claim are merely for damages to satisfy their alleged equity on the land. If that is the case then it would be a reasonable inference to state that the

plaintiffs are only interested in compensation. Learned counsel for the defendant on this point submitted that looking at the photographs of the squatter huts (see pp. 511-589 of Appeal Record (Vol. 2)) occupied by the plaintiffs, the said squatter huts are temporary in nature and the costs of each squatter huts would barely amount to about RM2,000 per squatter hut. Learned counsel for the defendant contended that if it is just a matter of money then damages would be an adequate remedy if the plaintiffs succeed in proving their claim on the basis of their alleged equitable interest on the said land. The learned judge however did not agree and his grounds of judgment he posed the question that in the event at the conclusion of the trial the court were to make a finding that the demolition of the houses were unlawful how are the compensation to be determined? Again with respect, we do not agree with the learned judge's view on this issue. We are of the view looking at the final reliefs sought for by the plaintiffs which is plainly in terms of monetary value, such damages and compensation, if any, to be awarded to the plaintiffs are definitively measurable and capable of being valued. The plaintiffs are claiming amongst others the current value of their occupied homes, improvement made on the land and cost of moving out of their homes.

[14] Secondly, we have to consider that the DUKE Project is of public interest as the purpose is to ease the traffic flow in the city of Kuala Lumpur. The interim injunction pending trial which was granted by the learned judge would cause the DUKE Project to be delayed or abandoned as the full trial would take some considerable time to be concluded. The defendant in this case is a public authority performing duties to the public and on this premise we would venture to state that the balance of convenience would have to lean in favour of the defendant in not granting the injunction sought for by the plaintiffs. (See the case of *Smith & Others v. Inner London Education Authority* [1978] 1 All ER 411).

[15] Thirdly, the plaintiffs are provided with alternative accommodation by the defendant for moving out of the said land whereby the plaintiffs are to rent a three room apartment at "Projek Perumahan Rakyat DBKL Sri Semarak" which was constructed within the vicinity of the plaintiffs' squatters huts. The rent is at a minimal rate of RM124 per month. Apart from alternative accommodation being provided, each family units are to be paid an *ex-gratia* sum of RM2,000. The defendant will also

provide labour, lorries and boxes to the plaintiffs to relocate. The plaintiffs would therefore be living in a better living condition at the modern building and facilities at the said "Projek Perumahan DBKL Sri Semarak" as opposed to the present squatter huts. It is to be noted here that a majority of those who have stayed previously on the same said land where the plaintiffs are staying have already moved out wherein they have responded to the relocation plan to stay at "Projek Perumahan DBKL Sri Semarak" as arranged by the defendant.

[16] Fourthly, no undertaking to pay damages have been given by the plaintiffs. In any event, any undertaking by the plaintiffs would remain a mere undertaking as the plaintiffs are not in any financial position to pay damages. For the defendant it has stated that losses of about RM165,000 per day is incurred by the Concessionaire Company assigned to construct the DUKE Project for the delay in taking possession of the site where the plaintiffs squatter huts are located. The defendant further stated that from the date of the ad-interim injunction given on 22 September 2006 until 6 February 2007 the Concessionaire Company has incurred losses of about RM25 million. In our view these losses would in turn cause financial implications to the Government. On the other hand the defendant or the Concessionaire Company is in a financial position to pay damages to the plaintiffs in the event the plaintiffs ultimately succeeds at the full trial.

Conclusion

[17] For the reasons already stated we would allow the defendant's appeal. The order of the learned judge dated 6 February 2007 is hereby set aside. In the circumstances of the case we are not making any order as to the costs arising from this appeal. The deposit paid by the defendant for this appeal is to be refunded to the defendant.